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In re Application of :
Spiess et al :
Application No. 10/068,243 : ON PETITION
Filed: February 6, 2002 :
Attorney Dck't. No. A 490-003-PAT: :

This is a decision on the petition filed January 12, 2004, under 37 CFR 1.183 seeking waiver of 37 CFR 1.193(b).

The petition under 37 CFR 1.183 is **dismissed**, *subject to renewal as indicated below*. Any renewed petition must be captioned "Renewed Petition under 37 CFR 1.183 for Waiver of 37 CFR 1.193" and must be filed within **TWO MONTHS** of this mailing. See 37 CFR 1.181(f). Extensions of time are not permitted under 37 CFR 1.136(a) or (b).

Petitioner seeks waiver of the rules to permit entry of the concurrently filed: Reply Brief, which is currently untimely under the governing rule (37 CFR 1.193). Petitioner asserts that counsel was suffering from an acute attack of gout and unable to more timely prepare the reply brief or seek an extension of time prior to expiry of the period.

As there is no requirement for the timely submission of a Reply Brief, to avoid the abandonment of an application, the failure to timely submit such an amended reply brief has not resulted in the abandonment of this application. Accordingly, this application is not abandoned, and the provisions of 37 CFR 1.137(b) do not apply in this instance. Nevertheless, it is appropriate to apply the principles thereof to the situation at issue.

Petitioner may wish to consider renewing the petition under 37 CFR 1.183 (no additional fee) and requesting that the Director waive the timeliness requirement of 37 CFR 1.193 and accept the delayed Reply Brief as if timely filed on the grounds that the delay was unintentional.¹

¹ It is brought to petitioner's attention that 37 CFR 1.183 sets forth that waiver of the rules is "subject to such other requirements as may be imposed."

A petition requesting acceptance of a delayed Reply Brief on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by (1) by the amended reply brief, unless previously filed, (2) the petition fee set forth in 37 CFR 1.17(m), and (3) a statement that the "delay was unintentional."


Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries relative to this decision should be directed to the undersigned at (703) 305-1820.



Brian Hearn
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